IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.11.2007

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRP.NPD.No.808 OF 2004 & CMP.No.6502/2004

K.M.Subramani

.. Petitioner/1st defendant/
1st respondent

Vs

1.Pattammal
2.R.Kamala
3.M.Venkatesan
4.M.Elumalai
5.S.Alamelu
6.Srinivasan
7.Veerappan
8.Parthasarathy
9.Ayyappan
10.Kuppammal .. Respondents/Plaintiffs/
Petitioners

11.R.Ravanammal
12.R.Padmalakshmi .. Respondents/2 & 3
(11th,12th respondents given up) defendants/Respondents

Petition filed under Section 115 of Code of Civil Procedure against the fair and decreetal order dated 13.02.2004 made in I.A.No.15254/2003 in O.S.No.2435/1997 on the file of the XI Assistant, City Civil Court, Chennai.

For Petitioner : Mr.T.N.Rajagopalan
For RR 1 to 10 : Mr.R.M.Sundar

ORDER

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The above Civil Revision Petition has been filed against the order dated 13.02.2004 in I.A.No.15254/2003 in O.S.No.2435/1997 passed by the learned XI Assistant Judge, City Civil Court, Chennai.

2.The revision petitioner is the first defendant/first respondent in O.S.No.2435/1997 and in I.A.No.15254/2003. The respondents 1 to 10 herein are the plaintiffs/petitioners in Lower Court. Respondents 11 and 12 were given up by the respondents/plaintiffs/petitioners on the ground that they are not necessary parties to the present revision.

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3.The respondents/plaintiffs/petitioners have filed an application in I.A.No.15254/2003 before the learned XI Assistant Judge, City Civil Court, Chennai, under section 5 of the Limitation Act to condone the delay of 989 days in filing the petition to restore the suit on file. It is represented that all the respondents/plaintiffs/petitioners in the suit were represented by the sixth respondent/sixth plaintiff/sixth petitioner as Power Agent. In the Interlocutory Application, the sixth respondent/sixth plaintiff/sixth petitioner has filed an affidavit wherein it is specifically stated that he was not feeling well due to heart ailment and because of the said reason, he was unable to contact his counsel in time and that he came to know that due to the non-appearance, the case was closed and dismissed for default on 06.11.2000 and prayed for condoning the delay of 989 days in filing the restoration application in the main suit which was dismissed for default. Except the reason that the sixth respondent/sixth plaintiff/sixth petitioner was unwell due to heart ailment, there is no averment in the affidavit filed by him as to when he came to know about the date of dismissal of the suit for default. The affidavit filed by the sixth respondent/sixth plaintiff/sixth petitioner is very bald and vague in this regard.

4.In the counter affidavit filed by the Revision Petitioner/first defendant/first respondent, it is inter-alia mentioned that the inordinate delay of 989 days was not explained and there was no sufficient cause for condoning the delay and that the sixth respondent/sixth plaintiff/sixth petitioner has not produced any documentary evidence in support of their stand. It is also further stated in the said counter affidavit filed by the revision petitioner/first defendant/first respondent before the Trial Court that on 06.11.2000 when the suit in O.S.No.2435/1997 was posted finally for trial, the plaintiffs/petitioners did not appear and the suit was dismissed rightly for non-appearance.

5.The learned XI Assistant Judge, City Civil Court, Chennai, has passed a conditional order on 13.02.2004 stating that:-

> " the application will be allowed on payment of cost of Rs.2,000/- to the revision petitioner/first defendant/first respondent on or before 03.03.2004 failing which the application shall stand dismissed. Call on 04.03.2004."

6.It is against this order, the present revision has been filed by the revision petitioner/first defendant/first respondent.

7.It is represented by the learned counsel for the respondents herein that in the Lower Court, the cost of Rs.2,000/- was deposited to the credit of the suit. According to the learned counsel for the revision petitioner/first defendant/first respondent, the order of the trial court in allowing the Interlocutory Application to condone the delay of 989 days in filing the application to restore the suit is contrary to law and it suffers from material irregularity and that the trial court has failed to note the Judgments reported in 2001 [3] M.L.J.500 and 2001 [2] M.L.J. 310.

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8.It is the case of the revision petitioner that inspite of no document or medical certificate being produced by the respondents to condone the huge delay of 989 days, the trial court was pleased to allow the application conditionally.

9.Learned counsel for the revision petitioner contends that there are ten plaintiffs in the suit and it is not the case of the other plaintiffs that all of them are suffering from ailments and were prevented from filing a petition to restore the suit. Further, it is also contended on behalf of the revision petitioner that the Trial Court erred in placing reliance on the decision reported in 1998 [2] CTC 533 between BALAKRISHNAN AND M.KRISHNAMOORTHY, since the facts of the present case are different.

10.Learned counsel for the revision petitioner drew the attention of this Court that the learned Trial Judge has erred in his order stating that the main suit is for partition and has proceeded on that ground whereas in reality, the suit is for declaration of the sale deed in favour of the petitioner was not valid and also for partition. In support of his contention, the learned counsel for the revision petitioner has produced a copy of the plaint before this Court and from the perusal of the said plaint, it transpires that the suit was laid for declaration that the sale deed dated 07.02.1992 executed by the learned II Judge, Small Causes Court, Madras, in favour of the first defendant was obtained by fraud and suppression of facts and not binding up on the plaintiffs or in the alternative for a declaration that the Sale deed dated 07.02.1992 obtained by the first respondent enure for the benefit of the legal heirs of the deceased K.R.Manicka Achari, viz., the father of the revision petitioner/first defendant/first respondent and secondly to declare that the plaintiffs 1 to 6 are entitled to 6/8 share and the plaintiffs 7 to 10 are entitled to 1/8 share in the land comprised in O.S.No.1059 in R.S.No.3022/2 morefully described in the Schedule 'A' and to put the plaintiffs in possession of the respective shares by metes and bounds and also for directing partition of the house and building bearing Door No.6, Meeyan Sahib Street, Chepauk, Madras-5 morefully described in Schedule 'B' by allotting 6/8 share to plaintiffs 1 to 6 and 1/8 share jointly to plaintiffs 7 to 10.

11.While allowing the I.A.No.15254/2003, the learned Trial Judge has observed that "the right to seek partition will not be extinguished by the delay in filing the petition to restore the suit and that the deponent has not produced any documentary evidence in support of his plea."

12.Expatiating the submission that the I.A.No.15254/2003 has to be dismissed, learned counsel for the revision petitioner placed reliance on the decision in 2003 [2] M.L.J. 837 between P.PERUMAL Vs. MINOR KUMARESAN S/O. P.PERUMAL, REPRESENTED BY HISMOTHER MRS.VENDAMMAL AND ANOTHER wherein this Court has observed as follows:

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> "[A]Limitation Act [36 of 1963], Sec.5-Sufficient cause-Applications filed for condonation of delay in setting aside the ex-parte decree-Applications dismissed-Revision preferred-It is true that the question of condonation of delay should be liberally considered-Facts disclose that the party against whom, ex-parte decree was passed, was aware of the proceedings-Sufficient cause not made out."

13.He also cited decision in 2001 [2] M.L.J. 310 [VAJJIRAVELU ASARI [DIED] AND OTHERS VS. ARULMIGHU SRI ARUNACHALESWARAR DEVASTHANAM BY ITS EXECUTIVE OFFICER, TIRUVANNAMALAI], wherein this court has held as follows:

> "Civil Procedure Code [V of 1908], O.9.Rule 13 - Limitation Act [XXXVI of 1963], Sec.5 - Application to set aside ex-parte decree and application for condonation of delay of 2062 days - Petitioner saying that he was not keeping well and could not appear before court because of his deafness - No evidence to show that he suffered from any illness that prevented him from attending court for 2062 days - Application dismissed."

14.Learned counsel for the respondents/plaintiffs/petitioners supported the order passed by the learned Trial Judge and submits that the word "Sufficient Cause" has to be liberally construed and cited decision in 2000 [1] CTC 769 between RAM NATH SAO @ RAM NATH SAHU AND OTHERS AND GOBARDHAN SAO AND OTHERS wherein the Honourable Supreme Court has inter-alia observed that "Courts have to strike balance between the effect or on parties to lis and that Court should not proceed with tendency of finding fault with cause shown and reject petition in over jubiliation of disposal drive and acceptance of explanation furnished should be rule and refusal exception more so and when no negligence, inaction or want of bona fide may be imputed to defaulting party".

15.It is true that in the affidavit filed by the sixth respondent/sixth defendant/sixth petitioner in I.A.No.15254/2003 before the Lower Court, there is no whisper as to what dated the petitioners came to know about the suit being dismissed for default and the said affidavit is very bald in nature.

16.It is relevant to make a mention that refusing to condone the delay can result in meritorious matter being thrown out at the initial stage and cause of justice being defeated. As against this, when the delay is condoned, the highest that can happen is that the cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of non-deliberate delay. After all, the litigant does not stand to benefit by resorting to delay. Per contra, he runs a serious risk in the considered opinion of this court. Moreover, it is to be remembered that

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judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and as expected to do so.

17.As far as the present case is concerned, even though sufficient cause has not been mentioned, in view of the decision of the Hon'ble Supreme Court reported in 2002 [1] CTC 769 between RAM NATH SAO @ RAM NATH SAHU AND OTHERS AND GOBARDHAN SAO AND OTHERS that Courts are to take a liberal view in these matters, *** this** court is of the view that in order to deliver substantial justice to the parties and in as much as the technicalities to be avoided by the law Courts and since the processual law is always subservient and is in aid of justice, the conditional order passed in the I.A.No.15254/2003 in regard to the payment of cost of Rs.2,000/- does not suffer from any illegality or irregularity and setting in revision, this court refuses to interfere with the orders passed by the Court below and resultantly, the Civil Revision Petition is dismissed and the order passed by the Lower Court is confirmed for the reasons assigned in this revision by this court. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

ap

Sd/- Asst. Registrar,
Dt/-29.11.2007.

*** Corrected order as per order of MVJ.**
Sd/-Asst. Registrar,
Dt/-5.1.2008.

/true copy/

Sub Asst. Registrar.

To
1. The XI Assistant Judge,
City Civil Court, Chennai.
2. -do- Through The Registrar,
City Civil Court, Chennai.
+1 cc to Mr.T.M.Rajagopalan,
Advocate Sr.No.69700.
+1 cc to Mr.R.M.Sundar,
Advocate Sr.No.69506.

To be substituted to the order already despatched on 5.12.2007

AKR(CO)
dcp/29.11
gp/7.1

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